

IN THE NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH

C.P. No. 1407/I&BP/2018

Under section 8 & 9 of the IBC, 2016

In the matter of

Harbour Water Suppliers Company Private
Limited

R No. 301, Zafryn Chambers, 3rd Floor, Plot
No. 294, Sewree Koliwada Rd., Opp. Rly Stn.,
Sewree (east), Mumbai – 400 015

.... Petitioner

v/s

Bhambhani Shipping Limited

Plot No. 206, Meera Hari Niwas, Opp.
Dhanalxmi Bil., Nr. Telephone Ex., SVP
Nagar, Mhada, Andheri (west), Mumbai – 400
053

.... Corporate Debtor

Order delivered on: 28.11.2019

Coram: Hon'ble Smt. Suchitra Kanuparthi, Member (Judicial)

Hon'ble Shri V. Nallasenapathy, Member (Technical)

For the Petitioner : Ms. Shreeya Bhingarde, Advocate.

For the Corporate Debtor: Mr. Prashant Dingrani, Advocate.

Per: V. Nallasenapathy, Member (T)

ORDER

1. This company Petition is filed by Harbour Water Suppliers Company Private Limited (hereinafter called "Petitioner ") seeking to set in motion the Corporate Insolvency Resolution Process (CIRP) against Bhambhani Shipping Limited (hereinafter called "Corporate Debtor") alleging that Corporate Debtor committed default on 02.06.2017 in making payment of Rs. 16,35,561/- including interest @18% p.a., by invoking the provisions of Section 8 and 9 of the Insolvency & Bankruptcy Code (hereinafter called "Code") read with Rule 5 and 6 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

2. The petition reveals that the Petitioner had supplied portable drinking water to the Corporate Debtor and raised invoices on the Corporate Debtor amounting to Rs. 24,42,320/- and received a part payment of Rs. 9,23,000/- and the balance due is Rs. 15,19,320/- towards principal amount.

3. The Petitioner submits that as per the invoice they are entitled for the interest @ 18 % p.a. on the delayed payment.

4. The demand notice under Section 8 of the Code was sent to the Corporate Debtor on 19.12.2017 demanding a sum of Rs. 16,35,561/-, the principal being Rs. 15,19,320/- and the interest of Rs. 1,16,241/- calculated @ 18 % p.a. on the delayed payment.

5. The Corporate Debtor in their reply to the demand notice by an email dated 09.04.2018 stated as below,

"Dear Mr. Umesh,

Regarding for the payment of outstanding dues, as we are agreed that there is late payment from our side and we are extremely sorry for that.

Now as discussion with our management, we are paying Rs. 1 lac immediately to your company.

And promising after week we will release more payments.

As our good relation with your good company from last 12-15 years we do not want to spoil the relation.

Once again we are sorry for late payment, but promising henceforth we release the payments smoothly.

Kindly confirm the receipt.

Brgds

Kumar Bhambhani

Bhambhani Shipping Ltd."

6. The above communication clearly shows that the Corporate Debtor is liable to pay the dues to the Petitioner and defaulted in making the payment. The counsel for the Petitioner submits that the petition was served to the Corporate Debtor and in fact the counsel for the Corporate Debtor appeared before this Bench on several occasions and on 24.01.2019 a last chance was given to the Corporate Debtor to file reply with a direction that the reply should be filed on or before 27.03.2019.

7. Even though the Corporate Debtor submitted before this Bench that the matter will be settled, neither they have settled the balance due nor filed the reply and nor appeared before the Bench.

8. One Mr. Vinod Radhakrishnan Nair, office at A-108, A wing, 1st Floor, Om Rachna Co-op. Hsg. Society Ltd., Sector 17, Vashi, Navi Mumbai – 400 703; having Registration No. IBBI/IPA-001/IP-P01352/2018-19/12083 has given his consent in Form No. 2 to act as an Interim Resolution Professional.

9. This Bench having been satisfied with the application filed by the Operational Creditor which is in compliance of provisions of Section 8 & 9 of the Insolvency &

Bankruptcy Code admits this application declaring Moratorium with the directions as mentioned below:

- (a) that this bench hereby prohibits the institution of suits or continuation of pending suits or proceedings against the Corporate Debtor including execution of any judgement, decree or other in any court of law; transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein; any action to foreclose, recover or enforce any security interest created by the Corporate Debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002; the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.
- (b) that the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.
- (c) that the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- (d) that the order of moratorium shall have effect from 28.11.2019 till the completion of the CIRP or until this Bench approves the resolution plan under sub-section (1) of Section 31 or passes an order for liquidation of Corporate Debtor under section 33, as the case may be.
- (e) that the public announcement of the CIRP shall be made immediately as specified under Section 13 of the Code.
- (f) that this Bench hereby appoints Mr. Vinod Radhakrishnan Nair, office at A-108, A wing, 1st Floor, Om Rachna Co-op. Hsg. Society Ltd., Sector 17, Vashi, Navi Mumbai – 400 703; having Registration No. IBBI/IPA-001/IP-P01352/2018-19/12083 as Interim Resolution Professional to carry the functions as mentioned under the Code.

10. The Registry is hereby directed to communicate this order to both the parties and to the Interim Resolution Professional immediately.

SD/-

V. Nallasenapathy
Member (Technical)

SD/-

Suchitra Kanuparthi
Member (Judicial)